decision upon various grounds. *Schillinger* v. *United States*, 24 Ct. of Claims, 278; 15 Sup. Ct. Rep. 85. In the first place, it is objected that the construction of the words "contract express or implied" has always in this connection been limited to cases where there was a possibility of inferring a contract implied in fact, although the cases seem to show that it had not been thought necessary to show the fact of real contract, but only the possibility. *United States* v. *Great Falls Co.*, 112 U. S. 645; *Great Falls Co.* v. *Garland*, 124 U. S. 581. It is submitted that although the construction of a statutory phrase like the one in question is not a matter for strict logic, it would be better either to stop at real contracts, or to go on to all cases of unjust enrichment, and so not sacrifice the right to the form of the remedy.

It is, however, asserted by the court that there is no unjust enrichment, and a case is put which, though extreme, is a fair test of the principle. "Take for illustration," says Mr. Justice Brewer, delivering the opinion of the court, "a patented hammer or trowel. If a contractor, in driving nails or laying bricks, use such patented tools, does any patent-right pass into the building and become a part of it?" It is submitted that if the building contract were let at a low price, and it were known that the saving was due to a patented trowel which the contractor intended to use in defiance of the patentee, the owner of the completed building would be saved money by the violation of the patent. The government, says Mr. Justice Brewer, is not "in possession or enjoyment of anything" of the plaintiff's. That is, nothing has passed into the building; but what does that matter? There may be no authority in the printed reports for the truth that a penny saved is a penny earned, but has any one ever tried to controvert that saying of Poor Richard's with success? And would not a penny unjustly saved weigh as much in the pocket and on the conscience of an honest man? It is submitted that it would, and that an honest Government ought to be in no better position.

"ACCEPTANCE" OF A CHECK — WHAT IS FORGERY. — In *First Nat. Bank* v. *Northwestern Nat. Bank*, 38 N. E. Rep. (Ill), it appeared that a certain person under the name of W. S. C., Treas., drew a check on the plaintiff bank, payable to "C. H. W., Asst. Gen. Supt." (a real person). Some person unknown wrote on the check the signature of "C. H. W. Asst. Gen. Supt.," and the check was presented to the plaintiff, who indorsed it "Accepted, payable through Chicago Clearing House, Northwestern Nat. Bank, per S., Teller." The check was placed in the hands of C. & G., who delivered it to the defendant Bank, who indorsed it and presented it for payment through the clearing house. The plaintiff soon after payment discovered the "forgery," tendered the check to the defendant demanding back the money, and the defendant refusing, the plaintiff brought this action of assumpsit. It was held that the drawee who had paid the bank check could recover back the money so paid on discovery of the "forgery," the demand for repayment being made within a reasonable time after the discovery of such "forgery." The "acceptor" of a check was said to be estopped to deny the genuineness of the drawer's signature by his acceptance, but not to deny the genuineness of any indorsements on the instrument.

The doctrine is perfectly sound that a drawee who pays to a holder claiming under a forged indorsement may recover back the money as paid

under a mistake of fact. 4 HARVARD LAW REVIEW, 307, and cases cited. And it is also well established that an acceptor is estopped to deny the genuineness of the drawer's signature (*Bank* v. *Ricker*, 71 Ill. 439; Bigelow, Estop. (4th ed.), 498; 2 Harm. Estop., §§ 1006, 1008), but not that of the indorsers (2 Dan. Neg. Inst., §§ 1364, 1365; *Canal Bank* v. *Bank of Albany*, 1 Hill, 287). There are, however, two points determined by the court in this case, which if decided differently might have resulted in judgment for the defendant. In the first place the court speak of the plaintiff's indorsement of this check as "an acceptance or certification" making no distinction between the two obligations and following *Marine Nat. Bank* v. *Nat. City Bank* (59 N. Y. 67), hold that the "acceptance or certification" of the check simply warranted the drawer's signature and that it had funds sufficient to meet it, but that the acceptance or certification did not warrant the genuineness of the bodies of the checks either as to the payees or the amounts, or warrant the genuineness of the indorsements on the checks. It is submitted that the court were wrong in making no distinction between an acceptance and a certification, and that, though what was said above is true of the former, it is not sound as to the latter, and that *Marine Bank* v. *City Bank* (*ubi supra*) is not in accord with the weight of authority. A certification is more than an acceptance; it is not a warranty but an obligation. It is practically paying the check with the certifying Bank's Certificate of Deposit, and the holder of a certified check has no recourse against the drawer or against any indorser prior to certification, if the certifying bank refuses to pay. *Minot* v. *Russ*, 156 Mass. 458; *Louisiana Nat. Bank* v. *Citizens Bank*, 3 Cent. Law Jour. 220; *Merchants Bank* v. *State Bank*, 10 Wall. 647; *United States Bank* v. *Bank of Georgia*, 10 Wheat. 333; 1 Morse on Banks and Banking, §§ 414, 415. If, therefore, the plaintiff's indorsement is a good certification it is submitted that he could not recover back this money. It was also urged by the defendant that the forgery of the indorsement was not sufficiently proven inasmuch as it does not appear that the check was really drawn in favor of C. H. W., and, further, that it was deducible from the evidence that the check was delivered to some person unknown, and that it was in fact the intention of the drawer that such person should receive the money as payee, and that therefore it was not forgery for such a person to indorse the check with the name of C. H. W. The court decline to accede to this proposition, and in so doing quote at length from the recent English case of *Vagliano* v. *The Bank*, 23 Q. B. Div. 243 (1889), which holds in substance that the rule, that a bill drawn in favor of a fictitious payee is the same as a bill payable to bearer, cannot be applied where the name of the payee is the name of a real person, even although it was the intention of the drawer that such real person should never have anything to do with the bill. It would seem that this doctrine is unsound. In these cases of "fictitious" payees the important question is, Whom does the drawer intend to make the payee? When he draws the bill inserting the name of a real person as payee does he mean that such person shall receive the money, or does he intend that some other individual whom he has in mind shall be the payee under the name written in the instrument? The acceptor by his acceptance promises to pay the person indicated by the drawer, *i. e.* intended by the drawer to be the payee. If, therefore, the payee who indorses the bill is in fact the person intended by the drawer, it is submitted that the indorsement is no forgery, though the name indorsed be that of some other real person.

Shipman v. *Bank of N. Y.*, 126 N. Y. 318; *Phillips* v. *Mercantile Nat. Bank*, 140 N. Y. 556; *Armstrong* v. *Nat. Bank*, 46 Ohio St. 512; *Lane* v. *Krekle*, 22 Iowa, 399; *Kohn* v. *Watkins*, 26 Kas. 691; *Phillips* v. *im Thurn*, L. R. 1 C. P. 463.

IMPLIED POWER OF SALE. — A case put by Lord Justice Lindley in delivering his opinion in *Henderson* v. *Williams* (11 Times Law Rep. 148), decided by the Court of Appeal last December, presents a most interesting question in the law of sale. Suppose R, a rascal, by fraudulently representing that he is the agent of X, negotiates a sale with A, who believes he is selling to X. A then notifies the warehouseman, who has possession of the goods, to hold them subject to the order of R, and a *bona fide* purchaser, relying on the warehouseman's statement that he so holds them, pays cash to R for the goods. Has title passed from the original owner to the *bona fide* purchaser? Lord Justice Lindley was of opinion that it had.

On the facts as they appear in the report, namely, that A thought he was selling to X through R as agent, it is clear that no title would have passed if A himself had delivered possession to R. *Cundy* v. *Lindsay*, 3 A. C. 459; *Rodliff* v. *Dallinger*, 141 Mass. 1; *Collins* v. *Ralli*, 20 Hun, 246; s. c. 85 N. Y. 637. It would have been a case of larceny by trick, and not of obtaining goods by false pretences. Does the fact that A authorized the warehouseman to deliver possession for him make any difference? This, it would seem, must depend on whether A's intention, as manifested by his overt act in so authorizing the warehouseman, was to give R not only the right of possession but also a general power of sale. It may, perhaps, be safely admitted that he did intend to give R power to dispose of the goods to such person as X, the supposed principal, should direct. But this doubtless would not be enough to enable R to pass title to a *bona fide* purchaser. One must go a step farther and say that he intended to give R a general power of sale. If this is conceded it is clear that the *bona fide* purchaser from R would get title, for R would then in effect be a trustee for X. Can this last step safely be taken? For aught that the purchaser knows, R may be agent for a principal who allows him to dispose of the goods only to such person as he, the principal, shall approve of. This is a perfectly possible transaction, and perfectly consistent with R's holding a delivery order on the warehouseman. Why, then, has the purchaser the right to suppose that it is not the real state of affairs? Why has he more right to suppose that R has a general power of sale, and to rely on such supposition, than one has to suppose that a person in possession has title and can pass it? The warehouseman is of course protected in delivering to the holder's order, because he was given authority to do so, but this seems very different from saying that, judged by his overt act, the owner must have intended to give R a general power of sale. Lord Lindley's view, it may be remarked, is not the less interesting in that it is *contra* to the result reached in the well known case of *Kingsford* v. *Merry*, 1 H. & N. 503.

The actual suit before the Court of Appeal was against the warehouseman, and as he had attorned to the *bona fide* purchaser, as well as represented that he held to the order of the rascal, the court decided that he was estopped by reason of such attornment, which is undoubtedly law. *Stonard* v. *Dunkin*, 2 Camp. 344; *Knights* v. *Wiffen*, L. R. 5 Q. B. 660. It must be admitted that this furnishes a strong practical argument in